plan for the State House of Representatives continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45. In this regard, you should be aware that the opening of candidate qualifying pursuant to the 1991 plan would constitute a prohibited implementation of this plan. South Carolina v. United States, 585 F. Supp. 418 (D.D.C. 1984); Busbee v. Smith, 549 F. Supp. 494, 497 n.1 (D.D.C. 1982). As we recently informed the court in the pending District of Columbia litigation, we will seek an order enjoining any such illegal implementation of the plan. In addition, in view of that pending litigation, the state may not seek authorization from a state or federal court in Texas or acquiesce in an order from such a court for use of this plan absent preclearance. South Carolina v. United States, 589 F. Supp. 757 (D.D.C. 1984).

We understand that the current schedule calls for candidate qualifying to begin on December 3, 1991, for a primary election on March 10, 1992, and a general election on November 3, 1992. We believe that sufficient time remains for the state to make the necessary adjustments to the submitted plan and to obtain Section 5 preclearance for the plan so that the election may proceed on schedule under a plan that meets the requirements of federal law. Should the state decide to seek to adopt a new plan, our staff remains available to discuss further the nature of our concerns with the submitted plan; if a new plan is adopted and administrative review is sought, we are prepared to respond on an expedited basis.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Steven H. Rosenbaum, Deputy Chief of the Voting Section at (202) 307-3143.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

JRD:GAS:GAS:lrj
DJ 166-012-3
90-0003

August 23, 1991

Tom Harrison, Esq.
Special Assistant for Elections
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Harrison:

This refers to Chapter 206, S.B. No. 907 (1989), which mandates procedures for creating hospital districts; provides for special elections therefor; establishes petition, notice, and ballot requirements for elections to create hospital districts; restricts the frequency of creation elections under specified circumstances; provides for interim appointed and permanent elected boards of directors; mandates an odd number of directors, with no fewer than five; permits three methods of election for a board of directors; mandates two-year, staggered terms and a plurality vote requirement; provides implementation plans; mandates the first Saturday in May as the regular election date; mandates regular election petition and notice requirements; specifies candidate qualifications; provides procedures for filling vacancies; establishes compensation provisions and powers, duties, and responsibilities for elected directors; provides procedures for annexation; provides for dissolution of a hospital district created pursuant to the statute, subject to special elections therefor; and permits special bond and tax elections, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information necessary to complete your submission on June 25, 1991.

Chapter 206 requires as a first step in creating a hospital district the circulation for signature of petitions which describe the method to be used to elect hospital directors. The act limits the permissible methods of election to three: (1) at large; (2) at large by place (numbered posts); or (3) a

combination of district and at-large seats. The third method requires the use of county commissioner districts. It appears that this last method would normally be unavailable to hospital districts that are not composed of whole counties, since it is likely that the resulting election districts would not satisfy the constitutional requirement of population equality.

Prior to the adoption of Chapter 206 the only means of creating a hospital district with direct control over financing was by a special act of the legislature which was tailored to the individual needs of the proposed district. Under this procedure there existed no express limitation on the method of selecting the board of directors of such a district.

Our understanding is that Chapter 206 was adopted to provide a general mechanism for hospital districts to be created without the need for individual legislation. The legislative history of the act indicates that no special consideration was given to the methods of selecting the hospital boards. It appears that the act's limitation on methods of election resulted from adapting language in a model bill previously used to create individual hospital districts. Although the three methods listed are said to be the methods most commonly specified in previous acts creating individual districts, the instant act apparently reflects no strong state policy that election methods for hospital districts should be so limited. Indeed, the legislature has on many previous occasions specified other methods of selecting hospital directors, and this Department has reviewed and precleared numerous such instances under Section 5. Such alternative methods, such as those using single-member districts exclusively or incorporating districts that do not correspond to commissioner districts would not be permitted under Chapter 206.

Our experience with hospital districts under Section 5 has shown that the method of selecting hospital district directors is often of significant interest and concern to voters, and raises important questions under the Voting Rights Act. We have twice interposed objections under Section 5 to the initial methods chosen by the legislature to elect individual hospital district boards. Our experience has led us to conclude that, as applied in particular cases, none of the methods of election specified in Chapter 206 would meet the requirements for preclearance under Section 5. The dilutive effect which at-large methods of election can have by submerging racial and ethnic minorities is well recognized in the case law and in our experience under Section 5. This effect is exacerbated by the limitation on single-shot voting resulting from the use of numbered posts or staggered terms. Nor are these concerns allayed by the inclusion in the act of the method employing commissioner districts. In the case of hospital districts formed of portions of counties,

this method would not appear to be available. Even when available, its limitation to four districts may well be insufficient to produce an electoral system in which minority voters would have an equal opportunity to participate in the electoral process and elect candidates of their choice and the requirement that there be at least one at-large seat could further reduce the likelihood that the electoral system would satisfy the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the voting changes occasioned by Chapter 206 (1989).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Chapter 206 (1989) continues to be legally unenforceable. See 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable John Hannah, Jr.
Secretary of State
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

AUG 04 1992

Dear Mr. Secretary:

This refers to your request that the Attorney General reconsider the August 23, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 206 (1989), which mandates procedures for creating hospital districts; provides for special elections therefor; establishes petition, notice, and ballot requirements for elections to create hospital districts; restricts the frequency of creation elections under specified circumstances; provides for interim appointed and permanent elected boards of directors; mandates an odd number of directors, with no fewer than five; permits three methods of election for a board of directors; mandates two-year, staggered terms and a plurality vote requirement; provides implementation plans; mandates the first Saturday in May as the regular election date; mandates regular election petition and notice requirements; specifies candidate qualifications; provides procedures for filling vacancies; establishes compensation provisions and powers, duties, and responsibilities for elected directors; provides procedures for annexation; provides for dissolution of a hospital district created pursuant to the statute, subject to special elections therefor; and permits special bond and tax elections, for the State of Texas. We received your letter on June 5, 1992.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files. Our objection to the voting changes occasioned by Chapter 206 centered on the limitation imposed by that act on the permissible methods of electing a hospital district board of directors. Our understanding of the act, which was confirmed by

your office, was that it allowed hospital boards to be elected under only the following three methods: at large, at large with numbered posts, or a combination of single-member districts corresponding to the commissioner districts and at-large seats. Among alternatives not permitted by the act, for example, was a system consisting purely of single-member districts. Our concern was that, as applied in particular cases, none of the methods of election permitted under Chapter 206 would meet the requirements for preclearance under Section 5.

Your request for reconsideration is based on Opinion No. DM-122 (June 1, 1992) of the Texas Attorney General regarding methods of electing hospital district directors under chapter 286 of the Health and Safety Code (the current codification of laws originally enacted by Chapter 206 (1989)). Your submission notes that your office accepts this new interpretation and that the Texas courts are bound to give great weight to Opinions of the Attorney General. In the formal opinion of the Texas Attorney General, the language of Chapter 206 permits the board of directors of hospital districts created under the authority of that act to be elected under a method of election consisting purely of single-member districts without any at-large seats, and that such districts need not correspond to those used to elect the commissioners court. Such an interpretation is sufficient to allay the concerns noted in our objection letter regarding the limitations on the method of electing hospital district boards.

Accordingly, pursuant to Section 51.48(c) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to the voting changes occasioned by Chapter 206 (1989) is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

The provisions of this Act are viewed as enabling legislation. Therefore, local jurisdictions are not relieved of their responsibility to seek Section 5 preclearance of any changes affecting voting (e.g., establishment of hospital district, adoption of election method) adopted pursuant to this Act. See 28 C.F.R. 51.15.

If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section. Refer to File No. 90-0003 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 10, 1992

Honorable John Hannah, Jr.
Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to House Bill No. 2 (1992), which concerns the 1992 primary and general elections and provides for the consolidation of election precincts, nomination of candidates by political party executive committees in the event that a different redistricting plan for either house of the legislature is used for the general election than was used for the primary election, an alternative date for the state and presidential primary election, a candidate filing period for state Senate for such primary, and the rescheduling of deadlines and modification of procedures consistent with the alternative primary date, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 10, 1992.

We have carefully considered the information you have provided, as well as information and comments from other interested persons. With regard to the provision authorizing the consolidation of election precincts for the 1992 primary and general elections only (H.B. 2, § 3), the Attorney General does not interpose any objection to the specified change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). We also note that the provision for the consolidation of election precincts is viewed as enabling legislation. Therefore, any changes affecting voting, such as the actual consolidation of specific election precincts, which you or others may seek to implement pursuant to this Act would be subject to Section 5 review. See 28 C.F.R. 51.15.

Another provision of H.B. 2, Section 8, addresses the possibility that the 1992 general election for "either house of the legislature" may be held under a redistricting plan different than the plan used for the 1992 primary election. If that circumstance were to occur, Section 8 provides: "if a political party has no nominee for a particular office under the new plan, the political party's appropriate executive committee may nominate a candidate to appear on the general election ballot for that office." Because neither your submission nor the text of this provision explains fully the operation of this provision, we have sought informally to obtain such clarification from the state but have obtained no official, written clarification in response to our inquiries.

It appears that the legislation contemplates that there would not be a new primary election if the state obtained authorization for holding the 1992 general election under a redistricting plan other than the state House and state Senate plans used for today's primary election pursuant to the orders of the three-judge federal court in Terrazas v. Slagle, Nos. 91-CA-425 and 426 (W.D. Tex. Dec. 24, 1991). Instead of a new primary, it appears that the political party nominee for the general election would be either the person chosen in the primary from the comparable district under the court's plan or the person chosen by the party executive committee.

The state has not explained adequately why it would seek to deprive voters of the opportunity to select political party nominees in a new primary if a new redistricting plan for the state House or state Senate is authorized for use in the general election. The effect of such a decision on minority voting strength could be analyzed thoroughly in the context of a specific redistricting plan. The state, however, has chosen to seek Section 5 preclearance for Section 8 now, despite the contingent nature of the provision and regardless of the specific plan that may be involved.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained with regard to Section 8 of H.B. 2. Therefore, on behalf of the Attorney General, I must object to the voting changes effected by Section 8.

Of course, as provided by Section 5, the state has the right to seek a declaratory judgment granting preclearance for the submitted change effected by Section 8 from the United States District Court for the District of Columbia. The state also may

request that the Attorney General reconsider the objection. Until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the provisions of Section 8 of H.B. 2 continue to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.46.

Finally, the provisions of Sections 2, 5, 6 and 7 of H.B. 2 are, by their terms, contingent on the authorization for the state to use the legislatively enacted state Senate redistricting plan (i.e., Senate Bill No. 1 (1992)) for the primary election. The state, however, has been ordered to hold primary elections on March 10, 1992, under the state Senate redistricting plan drawn by the court in Terrazas v. Slagle, No. 91-CA-426 (W.D. Tex.) and has been unsuccessful in its attempts to stay those orders or to obtain authorization to use the S.B. 1 redistricting plan. Nor has the state obtained the requisite preclearance under Section 5 for the S.B. 1 plan. Accordingly, no determination by the Attorney General is required or appropriate concerning these matters. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25 and 51.35).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Steven H. Rosenbaum, Deputy Chief of the Voting Section at (202) 307-3143.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

Honorable John Hannah, Jr.
Secretary of State
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

AUG 04 1992

Dear Mr. Secretary:

This refers to your request that the Attorney General reconsider the August 23, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 206 (1989), which mandates procedures for creating hospital districts; provides for special elections therefor; establishes petition, notice, and ballot requirements for elections to create hospital districts; restricts the frequency of creation elections under specified circumstances; provides for interim appointed and permanent elected boards of directors; mandates an odd number of directors, with no fewer than five; permits three methods of election for a board of directors; mandates two-year, staggered terms and a plurality vote requirement; provides implementation plans; mandates the first Saturday in May as the regular election date; mandates regular election petition and notice requirements; specifies candidate qualifications; provides procedures for filling vacancies; establishes compensation provisions and powers, duties, and responsibilities for elected directors; provides procedures for annexation; provides for dissolution of a hospital district created pursuant to the statute, subject to special elections therefor; and permits special bond and tax elections, for the State of Texas. We received your letter on June 5, 1992.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files. Our objection to the voting changes occasioned by Chapter 206 centered on the limitation imposed by that act on the permissible methods of electing a hospital district board of directors. Our understanding of the act, which was confirmed by

your office, was that it allowed hospital boards to be elected under only the following three methods: at large, at large with numbered posts, or a combination of single-member districts corresponding to the commissioner districts and at-large seats. Among alternatives not permitted by the act, for example, was a system consisting purely of single-member districts. Our concern was that, as applied in particular cases, none of the methods of election permitted under Chapter 206 would meet the requirements for preclearance under Section 5.

Your request for reconsideration is based on Opinion No. DM-122 (June 1, 1992) of the Texas Attorney General regarding methods of electing hospital district directors under chapter 286 of the Health and Safety Code (the current codification of laws originally enacted by Chapter 206 (1989)). Your submission notes that your office accepts this new interpretation and that the Texas courts are bound to give great weight to Opinions of the Attorney General. In the formal opinion of the Texas Attorney General, the language of Chapter 206 permits the board of directors of hospital districts created under the authority of that act to be elected under a method of election consisting purely of single-member districts without any at-large seats, and that such districts need not correspond to those used to elect the commissioners court. Such an interpretation is sufficient to allay the concerns noted in our objection letter regarding the limitations on the method of electing hospital district boards.

Accordingly, pursuant to Section 51.48(c) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to the voting changes occasioned by Chapter 206 (1989) is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

The provisions of this Act are viewed as enabling legislation. Therefore, local jurisdictions are not relieved of their responsibility to seek Section 5 preclearance of any changes affecting voting (e.g., establishment of hospital district, adoption of election method) adopted pursuant to this Act. See 28 C.F.R. 51.15.

If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section. Refer to File No. 90-0003 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 9, 1992

Honorable John Hannah, Jr.
Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Senate Bill No. 1 (1992), which provides the redistricting plan for the Senate of the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on January 9, 1992; supplemental information was received on January 10, 1992.

We note that the submitted redistricting plan is substantively identical to the plan resulting from the settlement of state court litigation in October 1991. Quiroz v. Richards, No. C-4395-91F (332nd Jud. Dist. Ct., Hidalgo County, Tex.); Mena v. Richards, No. C-454-91-F (332nd Jud. Dist. Ct., Hidalgo County, Tex.). As you know, that plan received Section 5 preclearance on November 18, 1991. Since then, there have been significant new developments and submission of new information regarding that redistricting plan.

In December 1991, the Texas Supreme Court invalidated the settlement, thereby precluding its further implementation. Terrazas v. Ramirez, No. D-1817, 1991 WL 269035 (Tex. Dec. 17, 1991). One week later, the three-judge federal court in Terrazas v. Slagle, No. 91-CA-426 (W.D. Tex. Dec. 24, 1991) ("Terrazas"), adopted its own interim plan for Senate elections in 1992.

In January 1992, the legislature enacted the submitted Senate redistricting plan, and the state sought to supplant the Terrazas court plan with the enacted plan. The Terrazas court denied the request to stay implementation of the court's plan for the 1992 elections and, in its January 10, 1992 opinion ruled that the enacted plan could not be implemented, even if it were precleared under Section 5, because it "fails to satisfy the Sec. 2 requirements of the Voting Rights Act," op. at 12-13.

We know that the state has appealed the relevant rulings in the Terrazas action, and that the appeal is pending in the United States Supreme Court. On several occasions, however, the Supreme Court has declined to stay the use of the Terrazas court's Senate redistricting plan for the 1992 election. Thus, at this time the extant orders in the Terrazas action preclude the implementation of the submitted redistricting plan for the 1992 election. Moreover, the finding that the submitted plan violates Section 2 would appear to preclude its use thereafter.

Under these circumstances, it is not clear that the state is entitled to invoke Section 5 to obtain either an administrative or judicial determination on the merits of the submitted plan. We recognize that the Supreme Court's decision on the state's appeal in Terrazas may determine whether the submitted plan is capable of implementation. But in view of the statutory time constraints, an administrative determination under Section 5 may not be deferred pending that ruling.

The Voting Rights Act requires that the submitting authority demonstrate that the proposed change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 520 (1973); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance may not be obtained for a voting change that clearly violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973; 28 C.F.R. 51.55 and 51.56.

In this situation, a federal district court has ruled that the submitted redistricting plan may not be used, in part, because the plan violates Section 2. That ruling, although challenged by the state, has not been vacated or reversed. Accordingly, I cannot conclude, as I must under the Voting Rights Act, that the plan meets the Act's preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the redistricting plan contained in Senate Bill No. 1 (1992).

Of course, as provided by Section 5, the state has the right to seek a declaratory judgment granting preclearance for the submitted redistricting plan from the United States District Court for the District of Columbia. As you are aware, the state has indicated it may do so in the context of the pending preclearance litigation concerning statewide redistricting. Texas v. United States, No. 91-2383 (D.D.C.).

The state also may request that the Attorney General reconsider the objection. In addition, reconsideration at the instance of the Attorney General may be appropriate "[w]here there appears to have been a substantial change in operative fact or relevant law." 28 C.F.R. 51.46(a). However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted redistricting plan for

the Texas Senate continues to be legally unenforceable under Section 5. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.46.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Steven H. Rosenbaum, Deputy Chief of the Voting Section at (202) 307-3143.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

NOV 16 2001

The Honorable Geoffrey Connor
Acting Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Secretary Connor:

This refers to the 2001 redistricting plan for the Texas House of Representatives, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 17, 2001; supplemental information was received through October 12, 2001.

We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information. As discussed further below, I cannot conclude that the State's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan for the Texas House of Representatives.

The 2000 Census indicates that the State has a total population of 20,851,820, of whom 11.5 percent are African American and 31.9 percent are Hispanic. The State's voting age population (VAP) is 14,965,061, of whom 10.9 percent are African American and 28.6 percent are Hispanic. One of the most significant changes to the State's demography has been the increase in the Hispanic population. Between 1990 and 2000, the Hispanic share of the State's population increased from 26 to 31.9 percent. Statewide, African American population remained stable.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited

purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

The constitutional requirement of one-person, one-vote mandated that the State reapportion the house districts in light of the population growth since the last decennial census. We note that the redistricting plan submitted by the State was passed by the Legislative Redistricting Board (LRB), which had assumed reapportionment responsibility under Article III of the Texas Constitution after the State legislature was unable to enact a redistricting plan.

The LRB held a series of meetings and hearings, culminating with a meeting on July 24, 2001, at which it considered new plans submitted by LRB members. The LRB adopted three amendments making substantive changes to the plan then under consideration. These amendments consisted of approximately 14 discrete changes.

The Texas House of Representatives consists of 150 members elected from single-member districts to two-year terms. Under the existing plan, there are 57 districts that are combined majority minority in total population, and 53 are combined majority minority in voting age population. With regard to those with a majority minority voting age population, 31 districts have a majority Hispanic voting age population, seven have a majority black voting age population, and the remaining 15 districts have a combined minority majority voting age population. There are 27 districts where a majority of the registered voters have a Spanish surname.

An initial issue arises as to the appropriate standard for determining whether a district is one in which Hispanic voters can elect a candidate of choice. The State of Texas has provided, and accepted as a relevant consideration, Spanish-surnamed registered voter data as well as election return information and voting age population data from the census. We agree with the State's assessment, although we also consider comments from local individuals familiar with the area, historical election analysis, analysis of local housing trends, and other information intended to create an accurate picture of citizenship concerns. Campos v. Houston, 113 F.3d 544, 548 (5th Cir. 1997).

Our examination of the State's plan indicates that it will lead to a prohibited retrogression in the position of minorities with respect to their effective exercise of the electoral franchise by causing a net loss of three districts in which the minority community would have had the opportunity to elect its

candidate of choice. Although there is an increase in the number of districts in which Hispanics are a majority of the voting age population, the number of districts in which the level of Spanish surnamed registration (SSRV) is more than 50 percent decreases by two as compared to the benchmark plan. Moreover, we note that in two additional districts SSRV has been reduced to the extent that the minority population in those districts can no longer elect a candidate of choice. In the State's plan these four reductions are only offset by the addition of a single new majority minority district - District 80 - leaving a net loss of three.

As described more fully below, when coupled with an analysis of election returns and other factors, we conclude that minority voting strength has been unnecessarily reduced in Bexar County, South Texas, and West Texas. Because retrogression is assessed on a state-wide basis, the State may remedy this impermissible retrogression either by restoring three districts from among these problem areas, by creating three viable new majority minority districts elsewhere in the State, or by some combination of these methods.

With regard to the problem areas we have identified, in Bexar County the 2000 Census data indicated that the county population constituted 10.4 ideal districts. As a result of the State's constitutional requirement of assigning a whole number of districts to the more populous counties, known as the "county line rule," the State reduced the number of districts in the county from 11 in the existing plan to 10. Although the State has admitted that the reduction to 10 would not have precluded it from maintaining the number of majority Hispanic districts at seven, it in fact chose to reduce that number to six. Initially, the State asserted that it had created an additional majority Hispanic district in Harris County so as to offset the loss of the Bexar County district and identified District 137 as a compensating district. Because the State's obligation under Section 5 is to ensure that the redistricting plan, as a whole, is not retrogressive, such a course of action is not impermissible. However, in the supplemental materials that were provided on October 10, 2001, the State notified us that if any district should be considered as the replacement, District 80 in South Texas - not District 137 - should be the one which offsets the loss of the majority Hispanic district in Bexar County.

When the State is considered as a whole, however, this argument is ultimately unpersuasive. While District 80 indeed adds an additional district in which Hispanic voters in South Texas will have the opportunity to elect a candidate of their choice, in two other districts, as discussed below, they lose

this opportunity, resulting in the net loss for Hispanic voters of one district in South Texas.

In South Texas Hispanic voters will lose the opportunity to elect their candidate of choice in District 35. The new district is created from existing Districts 31 and 44 and pairs an nonminority and a Hispanic incumbent. The Hispanic incumbent currently represents a district which has a Spanish surname registration level of 55.6 percent; that level drops to 50.2 percent in the proposed plan while the Hispanic voting age population decreases from 57.8 to 52.1 percent. Over half (58%) of the new district's configuration is from the nonminority incumbent's former district. Our analysis indicates that District 35 as drawn will preclude Hispanic voters from electing their candidates of choice.

In addition, in Cameron County District 38 reverts to a configuration that previously precluded Hispanic residents from electing a candidate of their choice. The Spanish surnamed registration level is reduced from 70.8 to 60.7 percent, and the Hispanic voting age population decreases from 78.7 percent to 69.6 percent. The State removed over 40 percent of the core of existing District 38, 90 percent of whom are Hispanic persons, and replaced it with population that is 45 percent nonminority. While the Hispanic voters in District 38 still remain a majority of voters in the district, because the area is subject to polarized voting along racial lines and under the particular circumstances present in this district, it is doubtful that Hispanics will be able to elect their candidate of choice.

Finally, the districts adjacent to Districts 35 and 38 have levels of Spanish surnamed registered voters exceeding 80 percent, and Hispanic voting age population exceeding 90 percent, both of which are far beyond what is necessary for compliance with the Voting Rights Act. Thus the reductions in Districts 35 and 38 were avoidable had the State avoided packing Hispanic voters into the districts adjacent to them. Moreover, overall the State fragments the core of majority Hispanic districts in this area, thus affecting member-constituent relations and existing communities of interest in these districts at a disproportionately higher rate than it does other districts in this part of the State. This fragmentation is unnecessary and disadvantages Hispanic voters by requiring them to establish new relations with their elected representatives. It also deviates from the State's traditional redistricting principles in a manner that exacerbates the retrogression in South Texas.

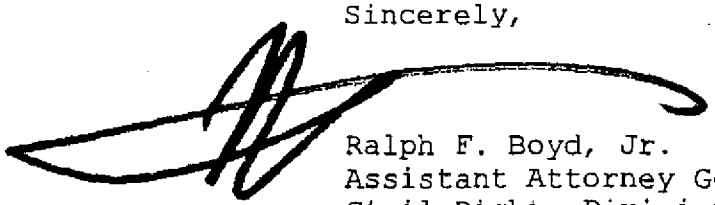
As for West Texas, Hispanic voters lose the opportunity to elect their candidate of choice in proposed District 74. The Spanish surname registration level decreases from 64.5 to 48.7 percent, and the Hispanic voting age population decreases from 73.4 to 57.3 percent. Significantly, the State did not need to reconfigure existing District 74 because the existing configuration under the 2000 Census was underpopulated by only 894 persons, a deviation of 0.64 percent. Such unnecessary population movement supplements our finding in our election analysis that Hispanic voters in District 74 will suffer a retrogression in the effective exercise of the electoral franchise. See Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, 66 Fed. Reg. 5411, 5413 (Jan. 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. On behalf of the Attorney General, I must object to the 2001 redistricting plan for the Texas House of Representatives. Beyond the specific discussion above, however, in all other respects we find that the State has satisfied the burden of proof required by Section 5.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Mr. Robert Berman (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,



Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

Other Objection Letters

DSD:JMC:JV:rjs
DJ 166-012-3
C8242; C7763

George Wiloff, Esq.
City Attorney
City of Port Arthur
Post Office Box 1089
Port Arthur, Texas 77640

15 JAN 1980

Dear Mr. Wiloff:

This is in reference to Ordinance No. 79-119, which calls for a referendum election on collective bargaining scheduled for January 19, 1980, in the City of Port Arthur, Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 27, 1979.

According to your letter of submission, Ordinance No. 79-119 was enacted to repeal and supercede Ordinance No. 79-108 which, like Ordinance No. 79-119, provided for the referendum election on collective bargaining scheduled for January 19, 1980. However, on December 21, 1979, prior to our receipt of your present submission, an objection was interposed to the January 19, 1980, referendum election provided for in Ordinance No. 79-108. The purpose of this letter is to advise you that, for the reasons set forth in our letter of December 21, 1979, relating to Ordinance No. 79-108 the Attorney General also objects to the referendum election set forth in Ordinance No. 79-119.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.33, and 51.34) permit you to request the Attorney General to reconsider

George Wikoff, Esq.
City Attorney
City of Port Arthur
Post Office Box 1089
Port Arthur, Texas 77640

15 JAN 1980

Dear Mr. Wikoff:

This is in reference to Ordinance No. 79-119, which calls for a referendum election on collective bargaining scheduled for January 19, 1980, in the City of Port Arthur, Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 27, 1979.

According to your letter of submission, Ordinance No. 79-119 was enacted to repeal and supercede Ordinance No. 79-108 which, like Ordinance No. 79-119, provided for the referendum election on collective bargaining scheduled for January 19, 1980. However, on December 21, 1979, prior to our receipt of your present submission, an objection was interposed to the January 19, 1980, referendum election provided for in Ordinance No. 79-108. The purpose of this letter is to advise you that, for the reasons set forth in our letter of December 21, 1979, relating to Ordinance No. 79-108 the Attorney General also objects to the referendum election set forth in Ordinance No. 79-119.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.22, and 51.24) permit you to request the Attorney General to reconsider

the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the referendum election legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us immediately upon receipt of this letter as to what course of action the City of Port Arthur plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Mr. Jose Vigil (202--724-6674) of our staff, who has been assigned to handle this submission. Please refer to File Nos. C4242 and C7763 in any written response to this letter so that your correspondence will be properly channeled.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

JAN 17 1980

Richard G. Sedgeley, Esq.
609 Fannin Building, Suite 1301
Fannin & Texas
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the procedures to be followed in the January 19, 1980, election of the County School Trustees of Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, and to compliance with Section 5 by the county school trustees with respect to the date of school trustee elections. Your submission was received on December 20, 1979.

The seven members of the board of trustees serve six-year terms, with two or three positions filled every two years. As of November 1, 1972, school trustee elections were held on the first Saturday in October of odd-numbered years. The legal effect of House Bill 275 (1975), was to shift the election date to the first Tuesday after the first Monday in November of odd-numbered years. Before the school trustees had an occasion for holding an election on the new election date, the legislature enacted House Bill 443 (1977), which gave the school trustees discretion to choose from among four possible election dates, including the November date specified by House Bill 275. Pursuant to House Bill 443, the school trustees chose the third Saturday in January of even-numbered years as the election date.

A change of election date is subject to the preclearance requirement of Section 5 of the Voting Rights Act. The school trustees' submission of the choice of the January date was received by the Attorney General on November 25, 1977. More

cc: Public File

information with respect to that submission was requested on January 20 and received on February 28, 1978, and an objection with respect to the choice of the January date was interposed on May 1, 1978. Following a request for reconsideration received on July 3, 1978, I declined, on September 1, 1978, to withdraw the objection.

In brief, the basis for the objection was that black and Mexican-American voters in Harris County would have a lesser opportunity to participate in school trustee elections if those elections were held in January, when there would generally be fewer opportunities for joint elections in areas where most black and Mexican-American voters reside than if those elections were held in November, when they could be held jointly with elections of the City of Houston and of the Houston Independent School District and with constitutional amendment elections. Although the required federal preclearance had not been obtained, the school trustee election was conducted on January 21, 1978.

Your submission with respect to the proposed January 19, 1980, election indicates no changes in circumstances that could provide a basis for the withdrawal of the objection to the choice of the January election date. We note that, according to your submission, in the area that comprises the Houston Independent School District, only 25 polling places are scheduled to be used on January 19, 1980, although this area contains 275 Harris County voting precincts. Since the same adverse effect on minority voters that led to our previous objection would be expected to again peculiarly disadvantage minority voters, were the election held on Janaury 19, 1980, on behalf of the Attorney General I must again object to the county school trustees' choice of election date.

The combined effect of House Bill 275 (1975) and the objections under Section 5 of the Voting Rights Act is that the legal election date for the election held on January 21, 1978, was November 8, 1977, and that the legal election date for the election scheduled to be held on January 19, 1980, was November 6, 1979. Because the two legal election dates are no longer available for use, we believe that the most adequate remedy for the school trustees' failure to comply with Section 5 is for new elections to be held in conjunction with the primary elections of May, 1980, at which time

all seats filled in January, 1978 and those that were to be filled in January, 1980 would be open for election to fill the seats for the remainder of their terms. Any conflict with state law may be resolved through a consent decree filed in a Section 5 enforcement action in federal district court. All future elections would be held in November, unless and until an alternative date is precleared pursuant to Section 5.

To enable us to carry out our responsibility to enforce the Voting Rights Act, please let us know immediately whether the county school trustees accept this proposed schedule of elections.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the county school trustees' choice of election date has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

If you have any questions concerning the matters discussed in this letter, please do not hesitate to telephone Voting Section Attorney David Hunter, at 202--724-7189.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

1 FEB 1980

Honorable T. L. Harville
Jim Wells County Judge
Post Office Drawer 2000
Alice, Texas 78332

Dear Judge Harville:

This is in reference to the proposed redistricting plan for Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 12, 1979 and additional information was received on January 2, 1980. Although we were unable to complete our evaluation by January 15, 1980 as you requested, we have expedited our consideration of your submission to the extent possible pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. Section 51.22).

We have analyzed carefully the material contained in your submission, data obtained from the Bureau of the Census, and comments from other interested persons. As explained to Mrs. Villareal on January 15, 1980, and to you on January 16, 1980, we found discrepancies in the data furnished on your summary charts and on the maps for the City of Alice with repect to the Census Enumeration Districts contained within proposed Commissioner Precinct One. During her telephone conversation with Elda Gordon of my staff, Mrs. Villareal confirmed that, despite the incongruity reflected in the summary charts, the County Commission is submitting the plan as depicted on the maps provided in the submission to the Attorney General. We have, therefore, reviewed your submission with this understanding.

In light of the inference of racial polarization among voters that emerged from our review of the election returns you provided, we find that the proposed plan has the potential of diluting the minority voting strength that has only recently begun to be realized in several largely Mexican-American voting precincts, which have been distributed among all four Commissioner Precincts. Although the information you have submitted is in large measure ambiguous and confusing, it appears that the proposed plan realistically yields only one district from which a Mexican-American may be elected and distinguishes that district as one that is over-populated and of little practical significance in view of the paucity of road mileage and budget funds allocated to it. Also, several members of the minority community have expressed concern about the conspicuous lack of input from interested members of the minority community, including the current Mexican-American commissioner, in the development of the plan and that Mexican-Americans in Jim Wells County, and especially those who reside in the area known as Rancho Alegre, may be denied effective and responsive representation on the Commissioners Court through the implementation of a plan that places that area within Commissioner Precinct Three. Thus the implementation of this proposed plan would appear to be retrogressive under the standard of Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed plan.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.22, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the implementation of the proposed redistricting plan for Jim Wells County legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Jim Wells County Commissioners Court plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Elda Gordon (202-724-6675), of my staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 5 1980

George Wikoff, Esq.
City Attorney
City of Port Arthur
Post Office Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to the consolidation of Lakeview, Pear Ridge and Port Arthur, the annexations of the Sabine Pass area (Ordinance Nos. 78-43, 78-44, 78-47, 79-33, 79-34 and 79-67) and Gulf of Mexico tracts (Ordinance Nos. 79-79, 79-103 and 79-116), and the revised council district plan (Ordinance No. 80-02), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 5, 1980. In accordance with your request expedited consideration has been given this submission pursuant to the Procedural Guidelines for the Administration of Section 5 (28 C.F.R. 51.22). I am also writing to discuss more fully the overall compliance by the City of Port Arthur, the City of Pear Ridge and the Town of Lakeview with Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

As you know, on March 24, 1978, a Section 5 objection was interposed to the consolidation of Pear Ridge and Lakeview into Port Arthur. The letter of objection notified the City that "the Attorney General will reconsider his objection to the consolidation should the City of Port Arthur undertake to elect members of its city council from fairly-drawn single-member districts." Since that time our staff has met with representatives of the City on several occasions in an effort to resolve this matter. Your latest proposal to obtain compliance with Section 5 was received on February 5, 1980, as indicated above. We have determined, after analysis, that the expansion of the Port Arthur City Council to eight members elected on an at-large basis from residency districts, instead of the seven previously provided for, does not meet the concerns that led to the objection. Therefore, on behalf of the Attorney General and for the reasons previously stated I must decline to withdraw the objection of March 24, 1978.

We have also examined the voting changes occasioned by the City's annexation of the area known as Sabine Pass. Our analysis shows that these voting changes serve to further exacerbate the dilution of minority voting strength caused by the earlier consolidation of Pear Ridge and Lakeview into the City of Port Arthur. For that reason, therefore, I must, on behalf of the Attorney General, interpose an objection to the annexation. Of course, as with our previous objection, the Attorney General will reconsider this objection should the City of Port Arthur undertake to elect members of its city council from fairly-drawn single-member districts. Also you have the right, as provided by Section 5, to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group.

Absent a declaratory judgment from the District Court for the District of Columbia, of course, the legal effect of the objections is to render the voting changes legally unenforceable. See, e.g., Allen v. State Board of Elections, 393 U.S. 544 (1969); Heggins v. City of Dallas, 469 F. Supp. 739 (N.D. Tex. 1979); Leroy and United States v. City of Houston, C.A. H78-2174 and C.A. H78-2407 (S.D. Tex., July 19, 1979). Notwithstanding the objection of March 24, 1978, the City's failure to obtain a withdrawal of that objection and the objection interposed today, we are aware that most of the voting changes occasioned by the consolidation and annexation have been implemented. Although city-wide councilmanic elections in the expanded Port Arthur have not been conducted, regularly scheduled elections in "old" Port Arthur have been cancelled as have elections in Pear Ridge and Lakeview. The Port Arthur City Council's responsibilities now include governing the former areas of Pear Ridge, Lakeview and Sabine Pass. The City of Port Arthur has provided representation for the Pear Ridge and Lakeview areas by appointing the mayors and councils of the respective municipalities to advisory councils and by establishing procedures for electing successors to these councils. Our staff has requested that the City submit the ordinances establishing these advisory councils for Section 5 review but the City has refused to make the necessary submission.

Under these circumstances, we believe that prompt action must be taken by the City to obtain a withdrawal of the March 24, 1978 objection, the objection interposed today and preclearance of the voting changes occasioned by provisions for the advisory councils, or Port Arthur, Pear Ridge, Lakeview and Sabine Pass must revert to the method of governance and election which existed prior to the consolidation and annexation. Almost two years have passed since the date of the initial objection and we perceive no basis for continued delay. Our experience in enforcing Section 5 in other Texas municipalities, such as Houston, Dallas, and San Antonio, demonstrates that these matters are capable of resolution without the delay that has resulted in the Port Arthur matter.

Thus, I request that you notify us within seven days of receipt of this letter as to what steps the City is willing to take either to obtain a withdrawal of the March 24, 1978 objection and the objection interposed today and to obtain preclearance of the ordinances establishing advisory councils or to revert back to the prior method of governance and election. Our staff remains willing to work with you and the appropriate officials during this time to resolve the matter. However, if we do not receive a firm commitment for a prompt resolution we will institute legal proceedings and request the court to order the necessary relief.

You have also submitted for preclearance, pursuant to Section 5, three ordinances which annexed tracts in the Gulf of Mexico. Since these annexations do not have a dilutive effect on the electorate of Port Arthur, the Attorney General interposes no objection to the annexations contained in Ordinances No. 79-79, 79-103 and 79-116.

If you have any questions regarding these matters please feel free to contact Mr. Robert S. Berman of our Voting Section at 202/724-6680. Mr. Berman is the attorney who is responsible for this matter and he will be available during the next seven days to work with you and the city officials to resolve this matter.

We appreciate your cooperation and it is our hope that this matter can be resolved without the necessity of litigation.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: George W. Strake, Jr.
Texas Secretary of State

Bernis W. Sadler,
Mayor, City of Port Arthur

George Dibrell,
City Manager of Port Arthur

Robert Q. Keith, Esq.

Jane Macon, Esq.
City Attorney
Post Office Box 9066
San Antonio, Texas 78285

24 MAR 1980

Dear Ms. Macon:

This is in reference to your request for reconsideration of the objection interposed on August 17, 1979, to the change in polling place location of Precinct 205 for the April 7, 1979, municipal election in San Antonio, Texas. The final supplement of your request was received on February 29, 1980.

In our letter of objection of August 17, 1979, we noted that our analysis at that time revealed that the location of the polling place for Precinct 205 at Our Lady of the Lake University was objectionable because of an apparent lack of notice of the location of the polling place in this predominantly Mexican-American precinct, and because of the inaccessibility of the polling place caused by construction work on 24th Street. These conclusions were based in part upon information provided by the former city clerk, Mr. G.V. Jackson, Jr., that the city did not provide notice of the exact location of the polling place on the campus of Our Lady of the Lake University, nor of the alternate routes of entry to the polling place other than the partially closed 24th Street entrance.

Subsequent to our August 17, 1979, objection you have adduced new and substantial evidence that the information previously supplied to us by the city clerk and others was erroneous. You have demonstrated that notice of the exact location of the polling place for Precinct 205 was published bilingually in two newspapers serving San Antonio, and that signs indicating alternate routes of access to the polling place were situated at several locations on election day. Furthermore, your random survey of voters in Precinct 205 has demonstrated that voters were generally familiar with the campus of Our Lady of the Lake University and the alternate routes of access to the polling place other than those blocked by construction on 24th Street. You have also presented information which shows that the voter turnout in Precinct 205 was not significantly different from that in comparable precincts during the April 7, 1979, municipal elections.

After a careful analysis of the newly submitted information and comments from other interested parties, I conclude that an objection is no longer warranted. Therefore, on behalf of the Attorney General, I withdraw the objection previously interposed to the polling place change for Precinct 205 during the April 7, 1979, municipal election in San Antonio.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

Edmund F. Benchoff, Esq.
Benchoff & Guidry
316 University Drive
Nacogdoches, Texas 75961

APR 3 1980

Dear Mr. Benchoff:

This is in reference to the 5:2 single-member district election plan for the Nacogdoches Independent School District in Nacogdoches County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 5, 1980.

Under Section 5, the district has the burden of proving that the submitted 5:2 plan does not represent a retrogression in the position of black voters in the district and that it does not transgress constitutional limits with respect to black voters. See Beer v. United States, 425 U.S. 130 (1976). See also 28 C.F.R. 51.19. Under White v. Regester, 412 U.S. 755 (1973), and its progeny, to prove the constitutionality of its system, the city must prove that the electoral system is equally open to black and white voters, and that each group has a fair opportunity to elect candidates of its choice.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to evidence of a general pattern of racially polarized voting in Nacogdoches County, the City of Nacogdoches and the Nacogdoches Independent School District, we have noted that no black has ever won election to the Nacogdoches Independent School District Board of Trustees. We have also been presented with and

have considered evidence of considerable residential racial segregation in Nacogdoches County.

On the basis of our review, it does not appear that the 5:2 plan submitted by the district, which provides for slim minority population majorities in Election Districts I and II, would offer black voters a fair opportunity to elect candidates of their choice. At the same time, the school district has rejected alternative electoral systems that would offer such an opportunity. For example, our analysis shows that it is possible to devise a plan that would provide for at least one district with a substantial minority population and voting age population majority. The adoption by the Nacogdoches Independent School District of an electoral scheme that would maintain minority voting strength at a minimum level, where alternative options would provide a fair chance for minority participation, is relevant to the question of an impermissible racial purpose in its adoption. See Wilkes County v. United States, 450 F. Supp. 1171 (D. D. C. 1978).

Under the circumstances we are unable to conclude, as we must under Section 5, that the submitted change does not have a racially discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the 5:2 single-member district plan now under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the 5:2 plan legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Nacogdoches Independent School District plans

to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

23 JUL 1980

George Wikoff, Esq.
City Attorney
Post Office Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to Ordinances Nos. 80-57, 80-59, and 80-60 (1980), which provide for a special August 9, 1980, referendum election and changes relating to that election, including five polling place changes and an extension of hours for absentee voting, for the City of Port Arthur in Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. The submitted ordinances indicate that the referendum will be conducted in the consolidated city, including the areas of Lakeview, Pear Ridge and Sabine Pass. Your submission was received on July 18, 1980. In accordance with your request expedited consideration has been given this submission pursuant to the Procedural Guidelines for the Administration of Section 5 (28 C.F.R. 51.22), in order to reach a determination by July 24, 1980.

We have given careful consideration to your proposal to conduct the referendum in the expanded city, notwithstanding the Section 5 objection to the consolidation and annexation. As you know, it is our position that Section 5 of the Voting Rights Act requires that no elections which implement the voting changes occasioned by the consolidation with Lakeview, Pear Ridge, and Sabine Pass may be conducted by the City of Port Arthur until the objection under Section 5 is removed, except elections that are likely to provide a basis for withdrawal of the Section 5 objection to the consolidations,

i.e., elections that are calculated to lead to the adoption of a plan for electing the city governing body which shows promise of "[affording black residents] representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975); see also City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973). This is the same principle we enunciated in the similar Houston annexation matter last summer, and in our letters of objection of December 21, 1979, and January 15, 1980, to a special referendum election in the expanded City of Port Arthur.

Pursuant to your request, we have not conducted a Section 5 review of the election plans themselves. However, we must, to some extent, consider the plans to be presented to the expanded city in order to determine whether the plans offer any promise of affording black residents representation reasonably equivalent to their political strength in the expanded city. On the basis of our past experience, it is our view that the 6-3 plan, if enacted, satisfies this test since it offers some promise of remedying the concerns which led to the objection. Thus, if this were the only election plan being presented we would interpose no objection to the conduct of the referendum in the expanded city. However, the proposed referendum also presents to the voters a 4-5 election plan. That plan, if enacted, will not "afford [black residents] representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, supra. Accordingly, I can perceive no basis for granting Section 5 preclearance to your proposal for submitting that plan to the expanded city. Thus, on behalf of the Attorney General I object to the referendum as proposed.

In interposing this objection, however, I stress that the Attorney General will grant Section 5 preclearance to any proposal for the conduct of a referendum in the expanded city so long as the election plan(s) to be presented meet the remedial test defined herein. Thus, the 6-3 plan and/or any other plan which shows promise of providing a basis for removing the objection to the consolidation, could be presented to the voters of the entire city. Should such a referendum be conducted the election plan adopted by the voters would be subject to the Voting Right Act's preclearance requirements, and would be reviewed on its merits with respect to the purpose and effect standards of Section 5.

I should reiterate that the city is not precluded from presenting the 4-5 plan or any other referendum issue to the voters of "old" Port Arthur, i.e., those persons residing within the boundaries of the city as they existed prior to the consolidations and annexation in question. The conduct of such a referendum would be subject to Section 5 preclearance only with regard to any procedural changes that are made in election practices or procedures.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed referendum has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the instant objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the August 9, 1980, special referendum election legally unenforceable.

Since a hearing has been scheduled for July 24, 1980 in United States v. City of Port Arthur, we will notify the office of the Honorable Robert A. Parker, by telephone, of the entry of this objection and will hand-deliver a copy of this letter to the Court prior to the hearing.

We continue to look forward to a prompt resolution of the long-standing Section 5 objection to the consolidation and annexation and it is our hope that the City will promptly propose for presentation to the voters an election plan meeting the remedial standard described herein.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

8 AUG 1980

Richard G. Sodgeley, Esq.
1301-609 Fannin Building
Houston, Texas 77002

Dear Mr. Sodgeley:

This is in reference to the adoption of numbered posts by the Cleveland Independent School District in Liberty County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 13, 1980.

Under Section 5, the District has the burden of proving that the submitted change to numbered posts will not result in a retrogression in the position of black voters in the district and that it will not transgress constitutional limits with respect to black voters. See Beer v. United States, 425 U.S. 130 (1976). See also 28 C.F.R. 51.19.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In particular, we have noted that there is evidence of a general pattern of racially polarized voting in the Cleveland Independent School District. On the basis of our review, it does not appear that the adoption of numbered posts, given the racially polarized voting patterns mentioned above, will continue to afford blacks a fair opportunity to elect representatives of their choice.

Under the circumstances we are unable to conclude, as we must under Section 5, that the submitted change does not have a racially discriminatory purpose or effect. Accordingly I must, on behalf of the Attorney General, interpose an objection to the adoption of the change to numbered posts now under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the adoption of the numbered post scheme legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the Cleveland Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
D1992-1995

Roland Carlson, Esq.
City Attorney
Post Office Box 1758
Victoria, Texas 77901

SEP 3 1980

Dear Mr. Carlson:

This is in reference to the annexations (Ordinances No. 79-32a (1979), No. 79-34a (1979), No. 80-9a (1980), and No. 80-10a (1980)), to the City of Victoria in Victoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on July 10, 1980.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group, the Attorney General must be satisfied either that the percentage of members of a racial or language minority group has not been appreciably reduced and that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups representation reasonably equivalent to their political strength in the enlarged community. See City of Richmond v. United States, 422 U.S. 358 (1975). See also 28 C.F.R. 51.18.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to evidence of a general pattern of racially polarized voting in City of Victoria elections, we have noted that no black or Mexican American has ever won election to the Victoria City Council under the at-large, majority vote, and designated place features of its electoral system. We have been presented with and have considered demographic information indicating

that it is most likely that the proportion of minority residents of the submitted annexations like their recent predecessors will be significantly smaller than that for the existing City of Victoria, and that the annexations will therefore dilute minority voting strength. The most reliable data before us indicates that the submitted annexations would decrease the combined minority percentage population by at least one percent and that, taken cumulatively with all annexations since 1973, they would decrease the population percentage by over three percent. In the context of Victoria's at-large election system, with its majority vote and designated post requirements, this dilution will not be counterbalanced by an ability on the part of the minority community to elect representation reasonably equivalent to its strength in the enlarged community. See City of Richmond, supra.

Under the circumstances we are, therefore, unable to conclude, as we must under Section 5, that the submitted annexation will not have the proscribed discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the submitted annexations.

Should the City of Victoria adopt an electoral system that would afford minority voters an opportunity to elect candidates of their choice, the Attorney General will consider withdrawing this objection. Our analysis has indicated that a plan incorporating single-member districts could offer such a fair opportunity.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the annexations legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the City of Victoria plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

SEP 2 2 1980

J. C. Reagan, Esq.
Bartram, Reagan, Burrus & Dierkson
P. O. Box 69
New Braunfels, Texas 78130

Dear Mr. Reagan:

This is in reference to your request that the Attorney General reconsider his February 1, 1980, objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to the redistricting of commissioner precincts and the change in boundaries of Voting Precincts No. 10 and No. 14 in Comal County, Texas. Your request was completed on February 27, 1980.

The Attorney General objected to these changes because the county had failed to provide sufficient information to enable us to make a determination on the merits of the changes involved and, thereby, had not sustained its burden of proving that these voting changes had neither the purpose nor the effect of discriminating on the basis of race, color, or membership in a language minority group. The information subsequently received from you and from other interested parties leads us to conclude at this time that the county has met that burden and that no objection to those changes is warranted. Therefore, pursuant to the reconsideration guidelines promulgated for the administration of Section 5, 28 C.F.R. 51.23 through 51.25, the objection interposed to the redistricting of Comal County commissioner precincts and the changes in Voting Precincts No. 10 and No. 14 is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

NOV 4 1980

Mr. Richard Bolf
Wilson County Clerk
P.O. Box 27
Floresville, Texas 78114

Dear Mr. Bolf:

This is in reference to the three polling place changes for Wilson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on September 29, 1980.

With regard to the changes for Voting Box No. 14 in Floresville City, within Commissioner's Precinct No. 4 and Voting Box No. 10 in La Vernia City within Commissioner's Precinct No. 3, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day period.

With respect to the proposed new polling place selected for Voting Box No. 1, Commissioner's Precinct No. 3, however, we cannot reach a like conclusion. In that regard, we have analyzed carefully the information contained in your submission and comments from other interested persons. Our analysis reveals that the new polling place would be approximately one and one-half miles from the present polling place, that there is no public transportation to the proposed polling place, and that the present site is located in close proximity to a heavily minority populated area and is within walking distance to a great majority of the minority registered voters in that precinct. Under the proposed change access to the polling place would be significantly reduced, particularly for minority persons, many of whom we understand are without the use of an automobile. We have, in addition, been presented with no compelling reason why the change is necessary.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973), 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Under these circumstances, therefore, on behalf of the Attorney General, I must interpose an objection to the polling place change for Voting Box No. 1, Commissioner's Precinct No. 3, in Wilson County, Texas.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the polling place change for Voting Box No. 1, Commissioner's Precinct No. 3, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Wilson County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Mr. Max Salazar (202-724-7169) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

FEB 9 1981

Joe D. Alford, Esq.
West Orange-Cove Consolidated
Independent School District
118 South Border
Orange, Texas 77630

Dear Mr. Alford:

This is in reference to the numbered position and majority vote requirements for the election of the Board of Trustees of the West Orange-Cove Consolidated Independent School District in Orange County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 9, 1980.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Under the present method of election, school trustees are elected at-large by a plurality vote. Under these circumstances, court decisions, to which we feel obligated to give great weight, indicate that a numbered position system and a majority vote requirement can have the potential for abridging minority voting rights. See Dunston v. Scott, 336 F. Supp 206, 213 (N.D. N.C. 1972); White v. Register, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Blacks United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 628, 632, 636 (W.D. La. 1976).

We have not been provided information sufficient to demonstrate that the position system and majority vote requirement will not dilute the potential of the minority

voting users in the West Orange-Cove Consolidated Independent School District. Although black candidates have been elected to the board of trustees, this was under the at-large, plurality method of election and it has not been shown that the addition of the position system and majority vote requirements will not make it more difficult for black candidates to be elected now will not inhibit the full and equal participation of blacks in the school district's political process.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of a place system and majority vote requirement in the West Orange-Cove Consolidated Independent School District and because the school district has not advanced any compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the position system and majority vote requirement, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the West Orange-Cove Consolidated Independent School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the place system and majority vote requirement for the election of members of the Board of Trustees of the West Orange-Cove Consolidated Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the use of the place system and majority vote requirement legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the West Orange-Cove Consolidated Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel to contact Carl W. Gabel (202--724-7439) of our staff, who is available to discuss this matter with you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

FEB 9 1981

Joe D. Alford, Esq.
West Orange-Cove Consolidated
Independent School District
118 South Border
Orange, Texas 77630

Dear Mr. Alford:

This is in reference to the numbered position and majority vote requirements for the election of the Board of Trustees of the West Orange-Cove Consolidated Independent School District in Orange County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 9, 1980.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Under the present method of election, school trustees are elected at-large by a plurality vote. Under these circumstances, court decisions, to which we feel obligated to give great weight, indicate that a numbered position system and a majority vote requirement can have the potential for abridging minority voting rights. See Dunston v. Scott, 336 F. Supp 206, 213 (N.D. N.C. 1972); White v. Register, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Blacks United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 628, 632, 636 (W.D. La. 1976).

We have not been provided information sufficient to demonstrate that the position system and majority vote requirement will not dilute the potential of the minority

voting strength in the West Orange-Cove Consolidated Independent School District. Although black candidates have been elected to the board of trustees, this was under the at-large, plurality method of election and it has not been shown that the addition of the position system and majority vote requirements will not make it more difficult for black candidates to be elected and will not inhibit the full and equal participation of blacks in the school district's political process.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of a place system and majority vote requirement in the West Orange-Cove Consolidated Independent School District and because the school district has not advanced any compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the position system and majority vote requirement, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the West Orange-Cove Consolidated Independent School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the place system and majority vote requirement for the election of members of the Board of Trustees of the West Orange-Cove Consolidated Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgement from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the use of the place system and majority vote requirement legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the West Orange-Cove Consolidated Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel to contact Carl W. Gabel (202--724-7439) of our staff, who is available to discuss this matter with you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

DJ 166-012-3
D1992-1993; D5041,
D5827-5830, D5367; D5826

MAR 13 1981

Charles Bluntzer, Esq.
City Attorney
Post Office Box 1758
Victoria, Texas 77901

Dear Mr. Bluntzer:

This is in reference to your request that the Attorney General reconsider his September 3, 1980, objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to four annexations (Ordinance Nos. 79-32a, 79-34a, 80-9a, and 80-10a), and also in reference to your submission of five charter amendments and a three district and four at-large apportionment plan for the City of Victoria in Victoria County, Texas. Because our reconsideration of the outstanding objection is inextricably linked with, and directly affected by, the subsequently submitted charter changes, we have followed our usual practice, described in Section 51.37 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878) and undertaken our reconsideration of the outstanding objection in conjunction with our review of the charter changes. Accordingly, both the submission and the request for reconsideration were considered completed on January 22, 1981, the date on which the submission of the charter changes and the reapportionment plan was completed.

The submitted charter changes include: an extension of councilmembers' terms from two to three years; the expansion of the city council from five to seven members; the adoption of a 3:4 mixed single-member district-at-large election method; the 2:2:3 staggering of terms so that an election will be held each year for one single-member district representative and one at-large representative; and a change in the runoff primary date. The Attorney General does not interpose any objections to any of these charter amendments or to the three district and four at-large plan. However,

We feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With regard to your request that the Attorney General reconsider his objection to the four annexations, in our view the dilution occasioned by these annexations is adequately remedied by the 3:4 method of election adopted by the City and to which we interpose no objection as indicated above. Accordingly, on behalf of the Attorney General, I am withdrawing the objection to the four annexations.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

JPT:CWG:CEI:spk
DJ 166-012-3
D5627

16 MAR [illegible]

Mr. [illegible]
Superintendent, Liberty
Public Schools
P.O. Box 371
Liberty, Texas 77575

Dear Mr. [illegible]:

This is in reference to the adoption of the numbered positions system by the Liberty Independent School District in Liberty County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on February 12, 1981.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Our analysis reveals that blacks constitute a substantial proportion of the population of the Liberty Independent School District and that bloc voting along racial lines appears to exist. It would seem that the addition of the numbered positions system in the District, when the number of voters, by race and voting pattern in the past are considered, will make it more difficult for black voters to elect candidates of their choice and will inhibit their full and equal participation in the District's political process.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., *Georgia v. United States*, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the implementation of the numbered positions system in the context of at-large elections.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the use of the numbered positions system legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Liberty Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

JUN 5 1981

[illegible]
[illegible]
First City National Bank Building
[illegible], Texas 77002

Dear Mr. Mahoney:

This is in reference to the reduction in polling places, from thirteen to one, for the Burleson County Hospital District in Burleson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 7, 1981.

In our consideration of your submission, we have considered carefully the information furnished by you, along with information and comments provided by other interested parties. Our review and analysis of this matter reveals the following facts: The Burleson County Hospital District has boundaries coterminous with Burleson County which has a population of 12,313, of whom twenty-two percent are black and ten percent are Mexican American. The number of polling places in the District was reduced from thirteen throughout the county to a single location in the City of Caldwell. The effect of this reduction in the number of polling places was a drop in voter participation from approximately 2,300 voters participating in the 1977 election to approximately 300 voters participating in 1979 and 1980 elections.

The bulk of the black population is concentrated in an area known as Clay Station, which is over thirty miles from the District's single polling place in the City of Caldwell. A large percentage of the county's Mexican-American population is found within the City of Somerville which is about nineteen miles from the City of Caldwell. Both of these areas had polling places that were eliminated by the change to a single polling location.

We understand that for the April 4, 1981, election, minorities from the Clay Station and Somerville areas were able to meet the burden placed on them by the use of a single polling place in Caldwell only through a concerted effort with other county voters with similar interests whereby they themselves successfully provided publicity for the election and transportation to the single poll. However, this additional burden imposed upon the minority voters to obtain access to the single poll was caused by the elimination of polling places in areas which are centers of minority population. Thus, the removal of polling places in the minority areas had a disparate impact on minority voters.

Under Section 5, the Burleson County Hospital District has the burden of proving that the reduction in the number of polling places from thirteen to one does not represent a retrogression in the position of minority voters in the district (see Beer v. United States, 425 U.S. 130 (1976)), and that the submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Thus, on behalf of the Attorney General I must interpose an objection to the continued use of a single polling place in future elections held by the Burleson County Hospital District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection and in that connection we have noted your request for a conference "in the event clearance is not anticipated". Because insufficient time remains to grant such a conference during the 60-day period allowed by statute to object we are sending this notification without affording such a conference. However, we would be pleased to hold a conference under the reconsideration procedures referred to above, if you desire and request it. In

any event, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of a single polling place for elections held by the Burleson County Hospital District legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter the course of action the Burleson County Hospital District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Cabel (202-724-7439), Director of Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

JUN 5 1981

[illegible] McCreary, Esq.
[illegible] Hilbig
First City National Bank Building
Houston, Texas 77002

Dear Mr. McCreary:

This is in reference to the reduction in polling places, from thirteen to one, for the Burleson County Hospital District in Burleson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 7, 1981.

In our consideration of your submission, we have considered carefully the information furnished by you, along with information and comments provided by other interested parties. Our review and analysis of this matter reveals the following facts: The Burleson County Hospital District has boundaries coterminous with Burleson County which has a population of 12,313, of whom twenty-two percent are black and ten percent are Mexican American. The number of polling places in the District was reduced from thirteen throughout the county to a single location in the City of Caldwell. One effect of this reduction in the number of polling places was a drop in voter participation from approximately 2,200 voters participating in the 1977 election to approximately 300 voters participating in 1979 and 1980 elections.

The bulk of the black population is concentrated in an area known as Clay Station, which is over thirty miles from the District's single polling place in the City of Caldwell. A large percentage of the county's Mexican-American population is found within the City of Somerville which is about nineteen miles from the City of Caldwell. Both of these areas had polling places that were eliminated by the change to a single polling location.

We understand that for the April 4, 1981, election, minorities from the Clay Station and Somerville areas were able to meet the burden placed on them by the use of a single polling place in Caldwell only through a concerted effort with other county voters with similar interests whereby they themselves successfully provided publicity for the election and transportation to the single poll. However, this additional burden imposed upon the minority voters to obtain access to the single poll was caused by the elimination of polling places in areas which are centers of minority population. Thus, the removal of polling places in the minority areas had a disparate impact on minority voters.

Under Section 5, the Burleson County Hospital District has the burden of proving that the reduction in the number of polling places from thirteen to one does not represent a retrogression in the position of minority voters in the district (see Beer v. United States, 425 U.S. 130 (1976)), and that the submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(c) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Thus, on behalf of the Attorney General I must interpose an objection to the continued use of a single polling place in future elections held by the Burleson County Hospital District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection and in that connection we have noted your request for a conference "in the event clearance is not anticipated". Because insufficient time remains to grant such a conference during the 60-day period allowed by statute to object we are sending this notification without affording such a conference. However, we would be pleased to hold a conference under the reconsideration procedures referred to above, if you desire and request it. In

any event, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of a single polling place for elections held by the Burleson County Hospital District legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter the course of action the Burleson County Hospital District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Cabel (202-724-7439), Director of Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

WBR:GWJ:PFR:DSC:bhq
DJ 166-012-3
R0840

81-0298

23 FEB 1982

Honorable Mark White
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711

Dear Mr. Attorney General:

This is in response to your letters dated February 8, 1982 and February 9, 1982 requesting reconsideration of the Section 5 objections interposed on January 25 and 29, 1982. As you know, this Department has recognized the Secretary of State as the official of the State of Texas responsible for submitting the congressional and legislative redistricting plans. Thus we cannot treat your letters of February 8 and 9 as requests for reconsideration of the objections at issue.

However, by letter dated February 9, 1982, the Secretary of State has requested that we reconsider the objections and that review process is currently underway. Your letters and supporting information will be considered in the course of our review and we invite you to submit whatever additional information you deem relevant.

I am enclosing for your information a copy of a letter which we have sent to the Secretary of State regarding the objections of January 25 and 29, 1982.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: William P. Hobby
Lieutenant Governor

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

12 MAR 1982

Mr. George Wikoff
City Attorney
P. O. Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to the City of Port Arthur's submission of the proposed consolidation of Port Arthur and Griffing Park, and the submission of a proposed election plan for the enlarged area. Your submission, pursuant to Section 5 of the Voting Rights Act of 1965, was received on February 24, 1982. As you requested, we have given expedited consideration to your submission.

The City's proposed consolidation with Griffing Park is tied to its proposed 4-2-2-1 election plan for the enlarged city. As you know, that plan has already been scrutinized by the three-judge court for the District of Columbia, and that court rejected the majority-vote feature for the at-large seats. In the conduct of our preclearance functions under Section 5 of the Voting Rights Act, we traditionally have considered ourselves to be a surrogate of the district court, seeking to make the kind of decision we believe the court would make if the matter were before it. In that role, therefore, as well as in our role as a party to that lawsuit, we are bound by the district court's decision.

Your request that we preclear the 4-2-2-1 plan essentially asks us to overturn the district court's decision. This we have no authority to do. However, even if we had the authority to make such a determination, we would not be justified in doing so since, by proposing to expand Port Arthur by including overwhelmingly white Griffing Park, Port Arthur has exacerbated the factual context in which the at-large features of the 4-2-2-1 plan would operate.

In light of these circumstances, and on the basis of other information available to us, including the evidence of record and the decision of the court in Port Arthur, Texas v. United States, 517 F. Supp. 987 (D.D.C. 1981), prob. juris. noted, 50 U.S.L.W. 3586 (January 25, 1982), we are unable to conclude that the proposed voting changes are free of a racially discriminatory purpose or effect. Accordingly, on

behalf of the Attorney General, I must interpose an objection under Section 5 to Port Arthur's proposed consolidation with Griffing Park and the proposed election plan (4-2-2-1 plan) for the enlarged area, because of the fact that the proposed election plan incorporates the majority-vote requirement for the two non-mayoral at-large seats.

The City, through its counsel Mr. Welch, has also proposed that, in any event, the Attorney General might preclear the consolidation and 4-2-2-1 plan on the condition that the City is successful before the Supreme Court in overturning the decision of the three-judge court. We know of no authority for the granting of such a "conditional" preclearance, and it would appear to us that, by operation of Section 5 itself, preclearance would be final absent an objection within 60 days of the submission. See, e.g., Morris v. Gressette, 432 U.S. 491 (1977). Accordingly, such action on our part would be neither appropriate nor effective. We do note, however, that the Supreme Court's decision in the pending litigation presumably will decide whether the majority-vote feature of the at-large posts is entitled to Section 5 preclearance. Once that decision is rendered by the Court, the City will be free to resubmit the proposed consolidation with Griffing Park along with such proposed election plan for the enlarged area as may appear appropriate in the context of that decision.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment regarding this matter from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until such a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General here is to make the proposed consolidation of Port Arthur and Griffing Park, as well as the proposed election plan for the enlarged city (the 4-2-2-1 plan), legally unenforceable.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

15 MAR 1982

Mr. Leroy Bieri
President, Board of Trustees
Angleton Independent School District
1900 North Downing Road
Angleton, Texas 77515

Dear Mr. Bieri:

This is in reference to the use of numbered positions for the election of members of the board of trustees for the Angleton Independent School District in Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was initially received on October 26, 1981, and supplemental information was received on January 12, 1982.

We note that in a telephone conversation on March 2, 1981, with Ms. Natalie Govan of our staff, Superintendent Wall stated his understanding that state law would require trustees to be elected by a majority vote after the adoption of numbered positions. Based on information which we received from the Office of the Texas Secretary of State, and from our review of Section 23.11 of the Texas Education Code, it appears that school districts are not required to follow a majority-vote rule when numbered positions are adopted but, rather, retain the option of imposing such a requirement. Since it appears, however, that the school district may have intended a change from a plurality-vote to a majority-vote as a part of its submission, we have addressed this change as well as the change to numbered positions in our consideration of your submission under Section 5.

Our analysis reveals that blacks and Mexican Americans constitute approximately twenty-five percent of the population of the Angleton Independent School District and that there are indications that bloc voting along racial and ethnic lines may exist. On the basis of the limited information

that is available, it appears that the addition of the numbered position, with or without the majority-vote requirement, will make it more difficult for minority candidates to be elected, and is likely to inhibit the full and equal participation of minorities in the school district's political process. In this connection, we note the observation in your letter of October 21, 1981, that under the present at-large, plurality-vote system "one particular candidate may be elected by a small group of voters by their voting for only one and refusing to vote for any others," and that under the present method of election "a person may be elected to a position on the board with less than a majority of the vote." This particular method of voting, however, has been recognized by the courts as a means peculiarly helpful to minorities seeking to win representation in an at-large system. Court decisions, to which we feel obligated to give great weight, indicate that a numbered position and majority-vote requirement in the context of the at-large election system for the school board can have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of numbered positions and a majority-vote requirement in the Angleton Independent School District and because the school district has not advanced any compelling reason for these changes, we are unable to conclude that the burden of proof has been sustained and that the imposition of the numbered position and majority-vote requirements, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the Angleton Independent School District. To the extent that the information we have obtained is conflicting with respect to some of the issues involved, the Attorney General is unable to determine that the submitted changes do not have the prohibited purpose or effect of discriminating. See Section 51.39 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 875). Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the numbered position and majority-vote requirements for the election of members of the Board of Trustees of the Angleton Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of numbered positions and a majority-vote requirement legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Angleton Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Mr. Easton Wall
Superintendent

U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 12 1982

Mr. Leroy Bieri
President, Board of Trustees
Angleton Independent School District
1900 North Downing Road
Angleton, Texas 77515

Dear Mr. Bieri:

This is in reference to your request that the Attorney General reconsider his March 15, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to numbered positions and a majority-vote requirement for the Angleton Independent School District in Brazoria County, Texas. Your request was received on March 31, 1982.

We have carefully reviewed the information that you have provided to us, as well as comments and information provided by other interested parties. However, we have not found a basis for the withdrawal of the Attorney General's objection. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group, irrespective of whether the changes have previously been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question unenforceable.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Defendant's Exhibit #

DE-005818

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

4 OCT 1982

Richard G. Sedgeley, Esq.
609 Fannin Building
Suite 1301
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the election date change from the first Tuesday after the first Monday in November in even-numbered years to the third Saturday in January in odd-numbered years for the election of members to the board of trustees for the Department of Education in Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on August 4, 1982. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have provided, as well as comments from other interested parties and information previously provided by the Harris County Department of Education. At the outset, we note that this change to January elections is not significantly different from and raises the same concerns as those which were noted in the previous submissions of November 25, 1977, and December 20, 1979.

Our analysis shows that the submitted change to January would result in holding elections on a date when a significant portion of the county's non-minority population will be voting for local school board members. On the other hand, in the Houston Independent School District (HISD) portion of the county, which contains the predominant proportion of the county's black and Hispanic population, no voting for HISD

school board members will occur nor are there any other significant elections on the proposed January date as there are in November. Thus, our analysis reveals that, even with an increase in the number of polling places as compared to elections previously scheduled for January, the bifurcation of the election from other significant elections in the area encompassed by the HISD will have a significant negative impact on minority voting rights.

Under these circumstances, therefore, I am unable to conclude that the Harris County Department of Education has met its burden of showing that the submitted change does not have the purpose or effect of discriminating against minority voters. Accordingly, I must, on behalf of the Attorney General interpose an objection to the election date change. In this connection, we note that the Attorney General interposed Section 5 objections to similar changes on two previous occasions--May 1, 1978, and January 17, 1980.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the requested election date change legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Harris County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Mr. Don Savage
City Manager
P. O. Box 209
Pleasanton, Texas 78064

14 OCT 1982

Dear Mr. Savage:

This is in reference to the August 14, 1982, referendum election; the majority vote requirement for the mayor; the implementation of numbered positions for councilmembers; the August 9, 1980, charter commission and charter commission member election; and the adoption of bilingual election procedures for the City of Pleasanton in Atascosa County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on August 16, 1982.

The Attorney General does not interpose any objections to the August 14, 1982, and August 9, 1980, referendum elections, the adoption of bilingual election procedures, and the majority vote requirement for the election of the mayor. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the implementation of numbered positions for councilmembers, we have considered carefully the information you have provided, as well as comments from other interested parties. Although Hispanics have been elected to the city council under the present method of election (i.e., at-large with plurality vote requirement), our analysis of the available information indicates that the addition of the numbered posi-

cc: Public File

tion requirement will have the effect of making it more difficult for Hispanic candidates to be elected, when compared to the present system. Such a situation would lead to a retrogression in the position of minority voters and thus would have an impermissible effect under the Act. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See also, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for dilution of the Hispanic voting strength inherent in the use of numbered positions and because the city has not advanced any compelling reason for its use, I am unable to conclude that the burden of proof has been sustained and that this change, in the context of an at-large system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of numbered positions for the election of councilmembers.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of numbered positions legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of

the course of action the City of Pleasanton plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

15 DEC 1982

Richard G. Sedgeley, Esq.
Suite 1301
601 Fannin Building
Fannin & Texas
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to your request that the Attorney General reconsider his October 4, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the change in election date from the first Tuesday after the first Monday in November in even-numbered years to the third Saturday in January in odd-numbered years for the election of members of the Harris County Board of School Trustees, Harris County, Texas. Your request was received at your meeting with members of our staff on October 13, 1982.

We have reviewed carefully the information that you have provided to us in support of your request, as well as that already in our files concerning this matter. In this connection, we note the indication in your letter of request that "substantial new information" was available which would be furnished to us but, to date, we have not received that information. However, the information which has been provided is not sufficient to allay the concerns set forth in our October 4, 1982, letter which led to our being unable to conclude that the holding of the elections in January, rather than November, will not have a prohibited disparate impact on minority participation in the electoral process. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group, irrespective of whether the change previously has been

submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

In addition, we have noted the request in your letter for permission to conduct an election for Board of Trustee members on the first Saturday in April or the second Saturday in August 1983 if our objection is not withdrawn. The Attorney General can make no determination with regard to that request, since a change which is not finally enacted or capable of administration is not ripe for review by the Attorney General. See 28 C.F.R. 51.20(a). Accordingly, we cannot properly evaluate your submission of an alternate election date unless and until such change is formally adopted. We do observe, however, that the holding of the Harris County Board of School Trustees elections on any date when other elections are not scheduled in the Houston Independent School District area likely would raise the same concerns which led to our October 4, 1982, and prior objections relative to this matter.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Harris County Board of School Trustees plans to take. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

T. 8/15/83 Ret. 8/17/83
WBR:SSC:ELG:dyw
DJ 166-012-3
G9277

August 19, 1983

Mr. Bennie Wolff
Superintendent, Stockdale
Independent School District
P. O. Box 7
Stockdale, Texas 78160

Dear Mr. Wolff:

This is in reference to the use of numbered positions for the election of board members of the Stockdale Independent School District in Wilson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on June 20, 1983.

We have given careful consideration to the information you have submitted, as well as that provided by other interested parties. Our analysis reveals evidence of racially polarized voting in the Stockdale area. Our analysis further reveals that the imposition of numbered positions will make it more difficult for Hispanic voters to elect candidates of their choice than under the present system because the change eliminates the benefits that accrue to minority voters from being able to vote single-shot. Since designated positions often cause head-to-head contests, this would, in effect, amount to a majority vote requirement to win elections, a success the minority would have little likelihood of attaining in the context of the racial bloc voting that seems to exist.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction bears the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures of the Administration of Section 5

(28 C.F.R. 51.39(e)). In order to show the absence of a racially discriminatory effect, the jurisdiction must demonstrate that the proposed change will not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In view of the above discussion, it would appear to us that the use of a designated post system of elections for the Stockdale Independent School District will lead to a retrogression in the ability of minority voters to elect candidates of their choice. For that reason, and because the school district has not advanced any compelling reason for the use of numbered positions, I am unable to conclude that the burden of proof has been sustained and that this change, in the context of an at-large system and the racially polarized voting that seems to exist in the Stockdale area, does not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of numbered positions for the election of board members of the Stockdale Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of numbered positions for the election of board members of the Stockdale Independent School District legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Stockdale Independent School District

plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General - Washington, D.C. 20530

20 OCT 1983

Lavon L. Jones, Esq.
Assistant Criminal District
Attorney
P. O. Box 2553
Beaumont, Texas 77704

Dear Mr. Jones:

This is in reference to the dissolution of the Beaumont Independent School District; the creation of a common school district; and its attachment to the South Park Independent School District in Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 22, 1983. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have given careful consideration to the information you have provided, as well as comments and information provided by other interested parties. We also have considered the evidence of record concerning the litigation pending in United States v. Texas Education Agency, 699 F.2d 1291 (5th Cir.), cert. denied, 52 U.S.L.W. 3228 (U.S. Oct. 3, 1983).

Our analysis of all available information shows that, at present, the City of Beaumont is divided into two school districts--the Beaumont Independent School District and the South Park Independent School District. Both districts elect a seven-member school board at-large. In the Beaumont Independent School District, which is 40-percent black, blacks have been able to elect three of the seven school board members; in the South Park Independent School District, which is 30-percent black, blacks have been unable to elect any of the seven members to the school board.

The change now under review proposes to create a single school district by abolishing the Beaumont Independent School District, and its integrated school board, and annexing that area to the South Park Independent School District. The enlarged school district would be 36-percent black and would elect its school board on an at-large basis.

Our information is that voting along racial lines exists in these elections and that blacks have been able to elect candidates of their choice in the 40-percent Beaumont Independent School District only by utilizing the technique of single-shot voting. Our analysis also has revealed a widespread concern among minorities and others that the decrease in the black percentage of the population resulting from the annexation to South Park of the Beaumont constituency will have a significant adverse impact on the ability of blacks to elect representatives of their choice to the surviving school board under an at-large election system.

Under Section 5 the county is required to demonstrate that the proposed change affecting voting "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See Georgia v. United States, 411 U.S. 526 (1973). See also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). While the submitting jurisdiction's burden usually is to show that the change will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" (Beer v. United States, 425 U.S. 130, 141 (1975)), in the case of an annexation such as that now before us, the proposed change would not have the prohibited effect "as long as the post-annexation electoral system fairly recognizes the minority's political potential" (City of Richmond v. United States, 422 U.S. 358, 378 (1975)). In other words, the system of elections after the change should be one that would afford minorities "representation reasonably equivalent to their political strength in the enlarged community." Id. at 370.

On the basis of our analysis of this submission, we are unable to conclude either that the changes in question will be nonretrogressive for black voters or that the election system will afford blacks "representation reasonably equivalent" to their political strength in the post-annexation school district. Accordingly, on behalf of the Attorney General, I must interpose an objection to the proposed dissolution of the Beaumont Independent School District, the creation of a common school district, and its attachment to the South Park Independent School District.

In this regard, courts consistently have recognized that the Voting Rights Act does not prohibit the territorial expansion of jurisdictions but that such expansions may "be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, i. e., that the [jurisdiction] shift from an at-large to a ward system of electing its [officials]." City of Petersburg v. United States, 354 F. Supp 1021, 1031 (D. D.C. 1972), aff'd, 410 U.S. 962 (1973). See also, City of Port Arthur v. United States, 51 U.S.L.W. 4033 (U.S. Dec. 13, 1982); City of Rome v. United States, 446 U.S. 156 (1980); City of Richmond v. United States, supra. Therefore, should the Board of Trustees of the South Park Independent School District undertake to adopt an appropriate election plan for its expanded jurisdiction (see Tex. Educ. Code Ann. §23.024 (Vernon 1983), as amended by Senate Bill No. 1304 (1983)), such action would provide grounds for reconsideration and withdrawal of the objection.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the dissolution of the Beaumont Independent School District, the creation of a common school district, and its attachment to the South Park Independent School District legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Jefferson County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 27, 1983

Mr. Jack R. Trammell
Superintendent, Pewitt Consolidated
Independent School District
P. O. Box 1106
Omaha, Texas 75571-1106

Dear Mr. Trammell:

This is in reference to the adoption of numbered positions by the Pewitt Consolidated Independent School District in Cass, Morris, and Titus Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on October 28, 1983.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Our analysis reveals that blacks constitute a substantial proportion of the population of the Pewitt Consolidated Independent School District and that bloc voting along racial lines appears to exist. Even though blacks do not appear ever to have elected a candidate of their choice to office, under the existing system they do have a potential for doing so through the technique of single-shot voting. However, the addition of the numbered positions system by the district will in effect nullify the advantage of single-shot voting, thus making it more difficult for black voters to elect candidates of their choice. In such circumstances, the proposed change would lead to an impermissible retrogression in the position of minority voters contrary to the Voting Rights Act. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose or a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the imposition of numbered positions by the Pewitt Consolidated Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the imposition of numbered positions legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Pewitt Consolidated Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

2 APR 1984

Glenn R. Snyder, Esq.
Snyder & Rugaard
P. O. Box 248
DeSoto, Texas 75115

Dear Mr. Snyder:

This refers to the four polling place and the absentee voting location changes for the Wilmer-Hutchins Independent School District in Dallas County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 15, 1984. Although we were unable to complete our evaluation by March 22, 1984, as you requested, we have expedited our consideration of your submission to the extent possible pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have considered carefully the information you have provided, as well as comments and information provided by other interested parties. At the outset, we note that the greater portion of the school district's population resides in the northern part of the district which is a part of the City of Dallas and is predominantly black. Under the existing arrangement, there are two school district polling places in this area (along with the absentee polling place) and one in the less populated southern portion of the district which contains the Cities of Wilmer, Hutchins, and Lancaster and is predominantly white.

The proposed changes would establish new polling places in the Cities of Wilmer, Hutchins, and Lancaster (in the southern portion of the district) while abolishing one of the two polling places now existing in Dallas in the northern portion of the district and the absentee voting location would be moved from the northern to the southern portion of the district. In addition, the school district has arranged to have its proposed polling places in Wilmer and Hutchins combined with polling places being used for city elections

which are being held on the same day but the district has declined to pursue similar arrangements for City of Dallas residents of the school district where city elections also are being held on the same day. Thus, our information indicates that not only would the school district be moving polling places out of the black community (where the greater proportion of the district's population resides) and into the less populated white areas (Wilmer, Hutchins, and Lancaster), it would also be conferring on white voters the additional advantage of consolidated voting locations for city elections and denying the black voters a similar opportunity.

The school district has not provided any credible reasons, unrelated to race, for its decrease in the facilities that will be available to the predominantly black and more heavily populated northern portion of the district nor for its failure to seek the use of Dallas city polling places for its election. This especially concerns us because we understand that recent efforts by blacks in the district to resolve this situation have been rejected by the school board despite the expressed willingness of the City of Dallas to coordinate polling place locations with the Wilmer-Hutchins School District. No satisfactory explanation has been provided as to why the school board refuses to accommodate the black community's desire to vote in the same location for both city and school elections in the same manner that it accommodated the largely white electorate in the Cities of Wilmer and Hutchins.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed polling place and absentee voting location changes.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed polling place and absentee voting location changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Wilmer-Hutchins Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division